



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JB PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for the Tenant pursuant to Sections 54 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, and the Tenant's Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on October 21, 2022, tracking number noted on cover sheet of decision, the Landlord confirmed receipt, deemed served on October 26, 2022;
- the Landlord's first evidence package served by registered mail on October 31, 2022, tracking number noted on cover sheet of decision, the Tenant confirmed receipt, deemed served on November 5, 2022; and,
- the Landlord's second evidence package served by registered mail on November 2, 2022, tracking number noted on cover sheet of decision, I stood down the hearing to give the Tenant time to review the Landlord's second evidence package, deemed served on November 7, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issue to be Decided

Is the Tenant entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on April 15, 2022. The fixed term was to end on March 30, 2023. I note that the uploaded tenancy agreement states this tenancy was a month-to-month tenancy. Monthly rent was \$1,350.00 payable on the first day of each month. A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant applied for an Order of Possession of the rental unit because the Landlord locked her out of the suite and restricted access to her belongings. The Tenant uploaded a video taken on October 5, 2022 where the rental unit looked mostly empty, and the locks had been changed as her key no longer provided access.

The Tenant uploaded text exchanges between herself and the Landlord. It starts on October 2, 2022 with the Landlord saying:

Sunday 6:15 AM

Thank you for moving out. You still owe \$1710 in past rent due. Plus \$732 in garbage removal for the last bits of garbage you left. I will keep the security deposit to repair the chairs, carpet, walls, and bathroom sink. Do not come to [address of rental unit] again or you will be charged with trespassing.

Many text messages followed the Landlord's initial message. The Tenant asked for the whereabouts of all her property, she alleges illegal entries to the rental unit by the Landlord and asked for the whereabouts of her daughter's pet gerbil and the Tenant's asthma medication. The Landlord's brief replies were, "*There wouldn't have been*

animals in the suite. Sorry I don't know what you are talking about. ... Bye girl. ... Isn't there a system you can scam for that."

The Tenant said she called the SPCA about her daughter's pet gerbil that she assumed was still in the rental unit. The Tenant stated the SPCA went to investigate the rental unit, but they did not see anything. The Tenant said the SPCA called the Landlord, and they were told there were no live animals in the rental unit.

The Tenant testified that the Landlord advised her that he had already moved new tenants into the rental unit. The Tenant stated she called a junk removal company that told her they had done a trip to the rental unit. The Landlord stated new tenants moved into the rental unit on October 2, 2022. The Landlord confirmed that he called the junk removal company who came in and emptied the rental unit. The Landlord did not confirm where all the Tenant's belongings went to.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

RTB Policy Guideline #51-Expedited Hearings helps parties with these kinds of applications understand likely relevant issues. The guideline states:

Order of Possession for Tenant

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

Both parties confirmed there was a valid tenancy agreement in place, and the uploaded tenancy agreement showed that a valid periodic tenancy existed. On October 5, 2022, the Tenant attempted to enter the rental unit, but the locks had been changed. The rental unit looked empty. The Landlord confirmed that new tenants had taken over the rental unit on October 2, 2022. The Landlord confirmed that they called a junk removal company to come and empty the home.

I find that this rental property has been emptied of all items that belonged to the Tenant. I find the Landlord was not formally notified that the Tenant was vacating the property and had not abandoned the rental unit. I find by bringing the junk removal company into the rental unit, the Landlord has not properly dealt with the Tenant's belongings.

Section 31 of the Act states a Landlord must not change locks that give access to residential property unless the Tenant agrees to the change and the Landlord provides the Tenant with new keys. I find the Landlord has breached Section 31 of the Act.

The Tenant's visual of the rental unit looked like the unit was empty. The Landlord said there are new tenants in the rental unit, so I will not grant an Order of Possession to the Tenant in this matter; however, I do grant leave to the Tenant to re-apply for compensation for any loss she has suffered.

For the benefit of the Tenant, she may wish to discuss with an Information Officer at the RTB the options available to her to seek monetary compensation from the Landlord. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Tenant's application is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 09, 2022

Residential Tenancy Branch